UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re	)	Case No. 97-3746
	)	Chapter 11
UPLAND PARTNERS,	)	
	)	Re: Docket No. 2742
Debtor.	)	
_____	)	

MEMORANDUM DECISION REGARDING MOTION TO VACATE ORDER ALLOWING COMPENSATION TO TRUSTEE'S SPECIAL COUNSEL

On January 23, 2004, the court entered an order ("Fee Order") (docket no. 2734) allowing compensation and reimbursement to Kessner Duca Umebayashi Bain & Matsunaga ("Kessner Duca"). On February 2, 2004, William S. Ellis, Jr., who contends that he is a party in interest, filed a Motion To Vacate Null & Void Order, which seeks to vacate the Fee Order. The motion has no merit.

Mr. Ellis argues that the order is null and void because Kessner Duca failed to comply with LBR 9021-1. That rule provides that the prevailing party at a hearing generally must prepare and circulate a proposed order to all parties who appeared at the hearing and gives those parties seven days to review and comment upon the order. Mr. Ellis' argument ignores LBR 9021-1(c), which provides that "[n]othing in this rule shall limit the court's discretion to enter orders, decisions or judgments prior to the expiration of the time periods specified herein." The immediate entry of an order is particularly appropriate where the prevailing party

uses a standard form of order promulgated by the court, as Kessner Duca did in this case.

Mr. Ellis argues that the court erroneously failed to enter written findings of fact and conclusions of law. Mr. Ellis again relies on a selective quotation of the rules and ignores the provisions that destroy his argument. Rule 52(a) of the Federal Rules of Civil Procedure (made applicable by Fed. R. Bankr. P. 9014)[1] provides that, "It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence . . . ." See In re McCarthy, 230 B.R. 414 , 417 (B.A.P. 9th Cir. 1999). The oral statement of reasons at the hearing on the application satisfies Rule 52(a).

[1] Kessner Duca argues that Rule 52(a) does not require findings and conclusions on compensation applications. Kessner Duca relies on the last sentence of the rule states that, "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivision (c) of this rule." This argument is incorrect. "[W]hen a motion becomes a contested matter under Rule 9014, the requirement of findings becomes applicable, notwithstanding the last sentence of Rule 52(a), since determination of the motion is a determination of the entire contested matter." 10 Collier on Bankruptcy ¶ 7052.02, at 7052-5 (15th ed. rev. 2003); see Peck Iron and Metal Co., Inc. v. Scrap Disposal, Inc. (In re Scrap Disposal, Inc.), 15 B.R. 296, 297 (B.A.P. 9th Cir. 1981).

Even though Mr. Ellis' motion has no procedural merit, I have reexamined the record out of an abundance of caution. This review has left me convinced that:

1. All of the services described in the Kessner Duca application were actually rendered and all of the expenses for which Kessner Duca seeks reimbursement were actually incurred. 11 U.S.C. § 330(a)(1)(A), (B). Mr. Ellis does not contend otherwise.

2. All of the services rendered and expenses incurred by Kessner Duca were necessary to the administration of the case and were beneficial at the time at which the service was rendered to the completion of the case. Id. § 330(a)(1), (a)(3)(C), (a)(4)(A)(ii). The court previously entered an order granting the Trustee's motion to convey certain property, and Mr. Ellis appealed. The estate needed counsel to represent it at the appellate argument.

3. The time that Kessner Duca spent on the services is reasonable and commensurate with the complexity, importance, and nature of the problem, issue, or task addressed. Id. § 330(a)(3)(A), (a)(3)(D). The time spent to prepare for the oral appellate argument was modest.

4. The rates charged by Kessner Duca for the services are reasonable, id. § 330(a)(3)(B), and comparable to the rates charged by other

attorneys with comparable levels of skill and experience. In particular, Mr. Duca is one of the most accomplished, experienced, and skillful practitioners in this district. His hourly rate is eminently reasonable.

5. The compensation that Kessner Duca requests is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title. Id. § 330(a)(3)(E).

6. There was no unnecessary duplication of services. Id. § 330(a)(4)(A)(i). Mr. Ellis complains that the Trustee's general counsel, Lyle Hosoda, should have presented the oral argument but did not because of a scheduling conflict that (according to Mr. Ellis) he should have cleared. This is immaterial. Any careful attorney preparing for the argument, including Mr. Hosoda, would have spent at least as much time as Mr. Duca did.

7. The services rendered are within the scope of the employment. Mr. Ellis claims that, under the court's order, Mr. Duca was authorized to argue the case but not authorized to discuss with his client the court's decision or its implications. This argument would absurdly restrict the relationship of special counsel and client and unnecessarily reduce the value of Mr. Duca's services to the estate.

8. Mr. Ellis incorrectly argues that the prevailing party on appeal is entitled to fees. Both the premise and the (unstated) conclusion are wrong. Under the American rule, each party ordinarily bears its own attorneys fees. Mr. Ellis identifies no exception to this general rule which applies here. Further, a client surely must pay his attorney even if the client can force his adversary to reimburse him for the fees.

A separate order shall be entered denying the motion.

DATED: Honolulu, Hawaii, February 11, 2004.

/s/ Robert J. Faris
United States Bankruptcy Judge